



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 16

Peter H. Priest, Esq.
Law Offices of Peter H. Priest
529 Dogwood Drive
Chapel Hill, NC 27516

MAILED

JUL 02 2003

Technology Center 2100

In re Application of: Etzel et al.)
Application No. 09/120,763)
Attorney Docket No. ETZEL-5-3-11) DECISION ON PETITION TO
Filed: July 22, 1998) WITHDRAWAL HOLDING OF
For: METHODS AND APPARATUS) ABANDONMENT UNDER 37 CFR §
FOR ENHANCED CMEA INCLUDING A) 1.181(a)
CMEA INTERACTION PRECEDED AND)
FOLLOWED BY TRANSFORMATIONS)
AND EMPLOYING AN INVOLUNTARY)
LOOKUP)

This is a decision on the petition filed on April 23, 2003 to withdraw the holding of abandonment under 37 CFR § 1.181(a). The petition is a renewed request from the decision to dismiss mailed February 24, 2003 (see Paper No. 14).

Applicable Prosecution History

Dec 27, 2000	Final rejection (Paper No. 7)
May 21, 2001	After-final response (Paper No. 8)
Jun 28, 2001	Non-final rejection (Paper No. 9)
Mar 6, 2002	Change of address (Paper No. 10) entered for Customer No. 30594

Issues

The original petition was dismissed due to an incomplete submission regarding which practitioner was responsible for the prosecution of the application. The renewed petition provides a declaration from Mr. Richard Anderson regarding a change of address submitted January 25, 2001, a copy of the change of address, a copy of the post card receipt and a copy of the docket records from the firm of Birch, Stewart, Kolasch & Birch.

Decision

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office presumes the communication was properly mailed to the address of record. According to the MPEP §711.03(c), the showing required to establish nonreceipt of an Office action includes the following:

- 1) a statement from *practitioner* that the Office action was not received,
- 2) a statement from *practitioner* that the file jacket and docket records were searched,
- 3) a copy of the docket record at the address of record, and
- 4) a reference to the docket record in the practitioner's statement.

[Emphasis added]

Because the statements regarding the facts in the petition are not clearly from *the practitioner*, the presumption of receipt remains.

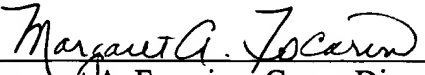
The originally filed declaration gave power of attorney to the firm of Peter H. Priest. While petitioners have provided acceptable evidence that a change of address was filed January 25, 2001, the change of correspondence address would not have been processed because it was signed by Mr. Gary D. Yacura of Birch, Stewart, Kolasch, & Birch. Mr. Yacura has not provided evidence to support that he had power of attorney. Under 37 CFR § 1.33, an attorney or agent must have the power of attorney in order to make a change of correspondence address when an oath or declaration has been filed granting a power of attorney in an application. Therefore, an attorney not of record cannot change the address (see MPEP 405 and 601.03).

To date, none of the petitions' statements or evidence are from the proper practitioners or address of record. On March 6, 2002, a change of address was performed for Customer Number 30594. While this change was originally processed by Office personnel, no record or evidence exists that confirm these papers filed were from a party with the proper power to revoke or make a change of address. It is noted the original petition decision dated Feb 24, 2003 was mailed to Harness, Dickey & Pierce, P.L.C. under the assumption the proper papers had by filed by applicants' representative. However, during a telephone conversation with Mr. Yacura on June 25, 2003 requesting supporting documents for a power of attorney, Mr. Yacura was unable to provide the papers requested.

As a result, the mailing address has been changed back to that found in the original declaration and this decision is being mailed to that address. As a courtesy, a duplicate copy is being mailed to Harness, Dickey & Pierce.

Therefore, the petition is **DENIED**. By statute, the application became abandoned for failure to reply within the set or extended period for reply (see 35 U.S.C. § 133). A notice of abandonment will be forthcoming.

The petitioner may choose to file a petition to revive the application under 37 CFR 1.137. Telephone inquiries on this decision should be directed to Josie Ballato, Special Programs Examiner, at (703) 308-0269.


Margaret A. Focarino, Group Director
Technology Center 2100
Computer Architecture, Software, and Information Security

CC: Mr. Gary Yacura
Harness, Dickey & Pierce, P.L.C.
P.O. Box 8910
Reston, VA 20195